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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1038**

John D. Hart,
Relator,

vs.

Healthcare Services Group, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 4, 2012
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 27028639-3

John D. Hart, Chanhassen, Minnesota (pro se relator)

Healthcare Services Group, Inc., TALX UC Express, St. Louis, Missouri (respondent)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul,
Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and
Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision by an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits, arguing that he had a good reason to quit his employment because his hours were reduced and that various procedural errors require reversal. We affirm.

FACTS

John Hart worked for Healthcare Services in a laundry position at a senior living center. Hart was offered only eight to ten hours per week when hired. When he hired Hart, Hart's supervisor promised him that he would be trained in other roles and would have the opportunity to work in a housekeeping position. Hart received training in housekeeping and other roles, and Hart worked increased hours as other workers in those positions went on vacation over the summer months. Between his hire date in June and the end of his employment in September of 2010, Hart worked between 20 and 70 hours per two-week pay period.

Hart's supervisor was responsible for Hart's schedule until August 29, 2010, when the supervisor left his position and was replaced. Before he left, Hart's supervisor created employee work schedules through September 25, 2010. In mid-September, Hart complained to his new supervisor that he had not been scheduled for enough hours. Hart's new supervisor promised to give Hart as many shifts as he could from the hours that other employees could not work but reminded Hart that he was a part-time employee. Hart requested that his new supervisor try to transfer him to another facility at which

Healthcare Services provided services, but his new supervisor was not able to find a position for him. On September 20, 2010, Hart told his new supervisor that he wanted full-time work and that he was quitting because he could not get it. Hart's new supervisor told Hart that a written resignation letter was needed and subsequently prepared one at Hart's request. Though he argued on appeal that he did so under threat of receiving a bad recommendation for future employers, Hart signed the letter, which indicated that October 9, 2010, would be his last day. But Hart did not go to work as scheduled on September 25, 2010.

Hart requested unemployment benefits and was determined to be eligible because of a reduction in his hours. Healthcare Services appealed the determination and a telephonic hearing was held before a ULJ, who issued a decision that Hart was ineligible for unemployment benefits. The ULJ affirmed the decision on reconsideration. Hart appeals by writ of certiorari.

D E C I S I O N

This court may modify, reverse, or remand a ULJ's decision if the substantial rights of the relator were prejudiced because the findings or decision were affected by an error of law or "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d) (2010). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion, or more than a scintilla of evidence.” *Moore Assocs., LLC v. Comm’r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996) (quotation omitted).

I. Did Hart Have a Good Reason to Quit?

Hart argues that his hours were reduced and that this reduction gave him a good reason to quit caused by his employer. An employee who voluntarily quits employment is ineligible for unemployment benefits unless “the applicant quit the employment because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1) (2010). A good reason caused by the employer is one that directly relates to employment, that the employer is responsible for, that is adverse to the employee, and “that would compel an average, reasonable worker to quit.” *Id.*, subd. 3(a) (2010). Moreover, the employee must “give the employer a reasonable opportunity to correct the adverse working conditions” before a good reason caused by the employer exists. *Id.*, subd. 3(c) (2010).

Whether an employee voluntarily quit is a question of fact. *Nichols v. Reliant Eng’g & Mfg. Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006). Whether an employee’s reason for quitting constitutes a good reason caused by the employer is a legal question reviewed de novo by this court. *Peppi v. Phyllis Wheatley Cmty. Ctr.*, 614 N.W.2d 750, 752 (Minn. App. 2000).

If Hart were promised full-time employment, but full-time work was subsequently made unavailable to Hart, that could constitute a good reason to quit. When an employer breaches a term of an employment agreement, an employee has a “good reason” to quit. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552–53 (Minn. App. 2003) (employer breached

promise to give employee raise), *review denied* (Minn. Sept. 24, 2003). This is true even if the agreement is based on an oral promise. *Krantz v. Loxtercamp Transp., Inc.*, 410 N.W.2d 24, 27 (Minn. App. 1987) (employer's breach of oral promise that employee would not have to work weekends); *Baker v. Fanny Farmer Candy Shops No. 154*, 394 N.W.2d 564, 566 (Minn. App. 1986) (employer's violation of oral understanding that employee would not have to work nights). Similarly, "a substantial pay reduction or an unreasonable change in terms of employment gives an employee good cause for quitting." *Wood v. Menard, Inc.*, 490 N.W.2d 441, 443 (Minn. App. 1992).

Hart contends that his first supervisor "clearly and definitely promised" that he would be trained in housekeeping roles such that he could be eligible for increased hours. Hart acknowledged that he initially applied for a part-time position, but nonetheless argued that he achieved full-time status during the summer following his hire. Hart worked 32 or more hours per week for a number of weeks, and he argues that this indicates that he achieved full-time status. Thirty-two hours per week is, in other unemployment benefit contexts, the defining line for full-time employment. *Lamah v. Doherty Emp't Grp.*, 737 N.W.2d 595, 600 (Minn. App. 2007). Hart reached that threshold, and the reduction from 32 hours to only 8 to 10 hours per week is a significant change. Hart then argues that the reduction in his hours constituted a good reason to quit.

The ULJ found that Hart was never promised full-time work by his initial supervisor and that Hart did not regularly achieve full-time hours such that a reduction in his hours would constitute a change in the condition of his employment. The ULJ noted that "[t]he facts show that Hart both applied for and was hired as a part-time employee."

This finding is supported by the application for employment and new hire form, which indicate that Hart was intended to be a part-time employee. This finding is also supported by the work schedules submitted by Healthcare Services, showing that many of the hours Hart worked during the summer months were when he substituted for other workers who were on vacation or were sick. Finally, this finding is supported by the testimony of Hart's second supervisor and the district manager, who both testified that Hart's increased hours came from substituting for other workers and that all part-time workers' hours were reduced at the end of the summer for the same reason. The only evidence indicating that these full-time hours had become a condition of employment was Hart's testimony.

On balance, the evidence supports the ULJ's finding that Hart's full-time hours during the summer were not a condition of employment but rather a temporary increase in a part-time position. This finding results from weighing the credibility of conflicting evidence, which is given deference by this court. Substantial evidence supports the finding that Hart was not a full-time employee. Because full-time work was not a condition of Hart's employment, the reduction in hours did not give Hart a good reason to quit caused by the employer.

II. Do Alleged Procedural Errors Require Reversal?

Hart also argues that the ULJ's decision resulted from unlawful procedure. We will reverse a ULJ's decision "if the substantial rights of the petitioner may have been prejudiced" by "unlawful procedure." Minn. Stat. § 268.105, subd. 7(d)(3). Procedural errors that do not prejudice substantial rights will not be reversed. *Ywswf v. Teleplan*

Wireless Servs., Inc., 726 N.W.2d 525, 530 (Minn. App. 2007). A hearing is generally considered fair if both parties are afforded the opportunity to give statements, cross-examine witnesses, and offer and object to exhibits. *Id.* at 529–30.

“Statutory construction is . . . a legal issue reviewed de novo.” *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007). When construing statutes, we attempt “to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). “We construe statutes to effect their essential purpose but will not disregard a statute’s clear language to pursue the spirit of the law.” *Lee*, 741 N.W.2d at 123. “In ascertaining the intention of the legislature,” we presume that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.” Minn. Stat. § 645.17(1) (2010).

Hart argues that the employer-agent failed to note in the appeal filing that a Healthcare Services district manager would be appearing at the hearing. Hart argues that this violates the requirement that an employer-agent must supply “[a]ll information requested when the appeal is filed . . . or the communication does not constitute an appeal.” Minn. Stat. § 268.103, subd. 2a(b) (2010). The appeal-filing form used by the employer-agent in this case asks whether “the employer [will] present witnesses other than the contact person at the hearing.” The form indicates that Hart’s second supervisor was the contact person for the hearing and that no other witnesses would be appearing.

This appeal-filing form does not appear to be intended as a foundational document of the case, but merely a beginning to the information-gathering process for the evidentiary hearing. In response to the employer-agent’s filing of an appeal, the

Minnesota Department of Employment and Economic Development (DEED) sends out another form asking for more information regarding the employee's eligibility for unemployment benefits. The appeal-filing form appears to merely be a notice to DEED and the employee that an appeal is pending and the basic reasons for the appeal. Failing to provide a phone number or contact person for the employer would be detrimental to this information-gathering process, so the statute requires that all information that is requested must be provided. It would be unfair if the employer were bound by a preliminary document in the case, while the employee is not similarly bound. Here, the employer-agent did respond to all questions asked when the form was filed. As a result, we decline to hold that section 268.103 is violated by the responses given in this case.

Hart was represented by counsel at the evidentiary hearing, and his counsel did not argue that the filing of the appeal was imperfect or that he suffered any prejudice because of the form. This is particularly notable because the hearing in this case started on March 9, 2011, but was continued to March 24, 2011, because of the ULJ's schedule. The period between those two dates would have allowed Hart to prepare for the testimony of the district manager, who did not testify on the first day of the hearing. Moreover, Hart was empowered to demand discovery from Healthcare Services, including the disclosure of the identity of all witnesses. Minn. R. 3310.2914, subp. 2 (2011).¹ Hart was also able

¹ We cite the most recent version of Minn. R. 3310.2914 because it has not been amended in relevant part since 2009. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case" unless doing so would affect vested rights or result in a manifest injustice).

to request subpoenas for any witnesses that he felt would have been important to the case. Minn. Stat. § 268.105, subd. 4 (2010). There is no evidence that Hart's substantial rights were prejudiced by this form.

Hart also argues that DEED took too long to issue a decision on his request for reconsideration and failed to comply with his request for the production of certain documents. Hart has not shown that these issues are violations of any statute or rule and has not shown that any such errors prejudiced his substantial rights.

Because these arguments are without merit, because the record does not clearly show that the statute regarding employer-agent appeals was violated, and because any violation of that statute was not prejudicial, we conclude that the ULJ's decision is not based on unlawful procedure.

Affirmed.